IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE:11/08/2004

CORAM

THE HONOURABLE MR.JUSTICE A.K.RAJAN

Writ Petition No.5463 of 1998

1.S.Mani
2.S.Rajendran
3.Settiya Gounder
4.Nachiyappa Gounder Petitioners

-Vs-

1. The District Collector
Salem District
Salem

2.The Special Tahsildar
(Adi-Dravidar Welfare)
Sankari, Salem District Respondents

Prayer: Petition filed under Article 226 of the Constitution of India, praying to issue a writ of Certiorari, as stated therein.

For Petitioners : Mr.V.Radhakrishnan
For Respondents : Mr.R.Chandrasekaran
Government Advocate.

:ORDER

This writ petition has been filed for the issuance of a writ of Certiorari, to call for the records of the first respondent relating to Notification No.Roc.65361/97/D8 dated 31.12.1997 and published at page 2 of Salem District Gazette Extra-ordinary No.II dated 17.01.1998, in so far as the petitioner is concerned in respect of S.Nos.68/4A1, 68/4A2A, 68/4A2B, and 68/4A2C of Chinnamanali Village, Edappadi Taluk, Salem District, and to quash the same.

2. The petitioners are challenging the Notification issued under Section 4(1) of the Tamil Nadu Land Acquisition Act. The writ petition challenging notification is mainly on the ground that the opportunity contemplated under Section 4(2) of the Tamil Nadu Acquisition of Land for Harijan Welfare Scheme Act 1978 has not been given to the petitioner. In order to satisfy whether opportunity was really given to the petitioner or not, this Court far back in October,2003, directed the Government Advocate to

produce the records of the Government in the next hearing. On the next hearing date, i.e., on 30.10.2003, once again the Government Advocate wanted time for the production of the records and hence the matter was adjourned to 03.11.2003. Thereafter, it went before the other Brother Judges and ultimately once again came before this Court on 09.08.2004. Once again a direction was issued to the learned Government Advocate to produce the records and again it was posted to 10.08.2004. On 10.08.2004 also the learned Government Advocate wanted time and one day time given and posted today.

3. The records are not made available even today. In spite of the fact sufficient opportunity has been given to the Government for the production of the records in order to find out the contends of the petitioners that they were not given opportunity under Section 4(2) of the Tamil Nadu Acquisition of Land for Harijan Welfare Scheme Act, the Government failed and neglected to produce the records. Therefore, in the absence of any materials

to show that the opportunity was given before passing Notification under Section 4(1) of the Tamil Nadu Land Acquisition Act, this Court is compelled to pass an order without reference to the file.

4. From the affidavit, it is seen that an opportunity under Section 4(2) has not been given to the petitioner. It has been denied in the counter affidavit in general terms; it has not been substantiated. This Court had been deprived of finding out the fact whether the notice has been served on the writ petitioner.
5. In those circumstances, this Court is compelled to accept the averments made in the affidavit filed by the writ petitioner and therefore, this Court comes to the conclusion that no opportunity as contemplated under Section 4(2) of the Tamil Nadu Acquisition of Land for Harijan Welfare Scheme Act, was given to the petitioner before issuing the Notification under Section 4(1) of the Tamil Nadu Land Acquisition Act. Therefore, the Notification under Section 4(1) of the said Act is illegal and it is set aside.
6. In the result, the writ petition is allowed as prayed for. No costs.

11.08.2004Note to Office:
Send copy of the order to the
Home Secretary and the Secretary
to Government (Adi-Dravida Welfare)
Tamil Nadu, Chennai, for information.

Index:yes
Internet:yes
ksr

Copy to
1. The District Collector

Salem District
Salem

2.The Special Tahsildar
(Adi-Dravidar Welfare)
Sankari, Salem District